IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

State of Rajasthan Vs. Kheraj Ram & others

D.B.CRIMINAL APPEAL NO.78/1985
against the judgment dt.3.9.1984 passed by
the Sessions Judge, Merta,
in Sessions Case No.37/1982.

Date of Judgment: Oct.22, 2007

P R E S E N T

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE DEO NARAYAN THANVI

Mr.J.P.S.Choudhary, Public Prosecutor.
Mr.Doongar Singh, for the respondents.

BY THE COURT: (PER THANVI J.)

1. This State Appeal is directed against the judgment of the learned Sessions Judge, Merta, dt.3.9.1984, whereby he acquitted accused respondents viz; Kheraj Ram, Babulal, Poona Ram, Harbhaj Ram, Jiya Ram & Tulsi Ram for the offences under sections 147/148, 302 & in the alternative 302 r/w 149, 326 & 325 r/w 149 IPC.

2. Facts leading to this appeal are that accused respondents Kheraj Ram, Babulal and Poona Ram were challaned in the court of learned Judicial Magistrate, Merta under Sections 302, 326, 325, 324, 323 r/w 34 IPC and were committed to the Court of Sessions. All the three accused respondents were charged for the offences u/ss.302, 302 r/w 34, 325 r/w 34, 326 r/w 34. Later-on, cognizance was also taken by the learned Sessions Judge against three more accused respondents viz; Harbhaj Ram, Jiya Ram & Tulsi Ram on 17.2.1983 after recording the evidence of Shobha Ram (PW 1) and Pabu Ram (PW 2). Arguments were again heard and all the six accused persons were charged under Sections 147, 148, 302 & in alternative 302 r/w 149, 326 & 325 r/w 149 IPC. The prosecution examined 22 witnesses. The statements of accused were recorded under Sec.313 CrPC. They produced seven witnesses in their defence. After hearing the arguments, the learned Sessions Judge passed the order of acquittal of all the six accused respondents.

3. The incident is said to have taken place in the morning of 31.8.1982 when, as per the police challan, deceased Guda Ram was going from village Jaroda to Dhawa, he was killed by accused Kheraj Ram, Babulal and Poona Ram with the help of armed weapons viz `kulharis' and `pharsis'. As per the police challan, the report of the incident was first given by Ramniwas,

Sarpanch (PW 17) vide Ex.P.14 through Hukma Ram (PW 10) on 31.8.82 at 10 A.M. Upon which, the S.H.O. Gugan Ram (PW 16) went to the spot and obtained another F.I.R., Ex.P.1 from Sohanlal (PW 12) and registered the case. In this report, Sohanlal named six accused persons, who inflicted injuries on the deceased. The moulds were obtained by the investigating agency and thereafter the challan was originally filed against three accused.

4. Learned Sessions Judge came to the conclusion that the evidence of eye witnesses viz; Birbal (PW 5), Sohanlal (PW 12) and Bhagwana Ram (PW 13) does not inspire confidence in view of the moulds found to be of only three persons and also not naming the accused persons in the original report Ex.P.14 filed through Sarpanch Ramniwas (PW 17), apart from these three witnesses being relatives of the deceased.

5. Learned Public Prosecutor has questioned the propriety of the judgment mainly on the ground that the three witnesses, despite being relatives of deceased, are eye witnesses and the learned Sessions Judge has wrongly disbelieved their testimony without there being any major contradictions and uncorroboration in their statements. On the other hand, learned counsel for the accused respondents has supported the judgment

of the learned Sessions Judge.

6. We have re-appreciated the evidence on record. It is true that witnesses of the incident as put-forth by the prosecution are only three viz; Birbal (PW 5), Sohanlal (PW 12) and Bhagwana Ram (PW 13) and they are also not hostile. But how far, their testimony is creditable to reverse the finding of acquittal, is a question to be answered in the light of the creditability of their version. There is no dispute as held by the learned Sessions Judge that deceased was found dead on the way between the village Jaroda and Dhawa. Birbal (PW 5) and his brother Bhagwana Ram (PW 13) have stated that they were coming from village Basni to Jaroda and they saw the incident near the field of Bhagu and Shobha. Upon hearing the cries, they went to the spot and saw that eight persons including Ramlal and Bagda Ram, who are not accused in the case, were inflicting injuries with lathis and `pharsis' on the person of Guda Ram, upon which he fell down and, thereafter, the accused persons left the spot. They noticed the injuries on the person of Guda Ram and informed about the incident to Sarpanch and, thereafter, they left to the village. Sohanlal (PW 12) remained there. At about 10 A.M., S.H.O. reached on the spot to whom he gave a report Ex.P.1 in which the names of six accused persons were given.

7. If the statements of these three witnesses are read in the light of the F.I.R. Ex.P.1 and Ex.P.14, it transpires that Sohanlal, informant of Ex.P.1, (PW 12) has not named Ramlal and Bagda Ram in inflicting injuries, as stated by Birbal (PW 5) and Bhagwana Ram (PW 13). So far as the remaining six accused persons are concerned, all the three eye witnesses have categorically stated that they (accused respondents) had inflicted injuries on the body of deceased Guda Ram but before considering their testimony to be trustworthy, there are several other factors which the learned trial Judge has taken into account while disbelieving their testimony. The most important factor is not naming the accused persons in the original F.I.R. (Ex.P.14), which was given by Sarpanch Ramniwas (PW 17) because according to this witness, he sent the report on the basis of the information given to him by Birbal (PW 5) and Bhagwana Ram (PW 13). Had these six accused been in fact present on the spot for the purpose of inflicting injuries on the body of deceased, Ramniwas (PW 17) could have named them in the first report (Ex.P.14). Upon asking, he has stated in his cross examination that neither he asked the names of the accused as to who inflicted injuries on deceased Guda Ram nor Birbal (PW 5) and Bhagwana Ram (PW 13) disclosed the names of accused persons to him. Secondly, all the three eye witnesses viz; Birbal (PW 5), Sohanlal (PW 12) and Bhagwana Ram (PW 13), who are

relatives of deceased Guda Ram, have admitted in their cross examination that there was enmity between the deceased Guda Ram and the accused persons prior to the incident on account of criminal cases. Thirdly, the moulds, which had been taken, were found to be only of three persons, whereas one of the eye witnesses viz; Sohanlal (PW 12) is naming six accused in inflicting injuries and two eye witnesses viz; Birbal (PW 5) and Bhagwana Ram (PW 13) are naming eight accused persons in inflicting injuries. Fourthly, there is no reason as to why these three eye witnesses went to the place of occurrence, which was not the normal passage for going to village Jaroda. Fifthly, the natural witnesses of the incident could have been Bhagu and Shobha, near whose field the incident took place but they have not seen the incident. Bhagu Ram (PW 11) has turned hostile and Shobha Ram (PW 1) is only the witness of site plan. In this way, discarding the evidence of these three eye witnesses by the learned Sessions Judge cannot be said to be contrary to the established principles of appreciation of evidence in a criminal trial. In the absence of any reliable evidence , there seems no reason to call for any interference in the finding of acquittal, arrived-at by the learned Sessions Judge.

8. We, accordingly, dismiss this State Appeal and confirm the judgment of learned Sessions Judge, Merta, acquitting the

accused respondents for the offences charged vide his judgment dt.3.9.1984. Since the accused respondents are on bail, their bail bonds stand cancelled.

(DEO NARAYAN THANVI), J. **(BHAGWATI PRASAD), J.**

RANKAWAT JK, PS